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II

110TH CONGRESS  
2D SESSION

# S. 3206

To amend titles V, XVIII, and XIX of the Social Security Act to promote cessation of tobacco use under the Medicare program, the Medicaid program, and the maternal and child health services block grant program.

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## IN THE SENATE OF THE UNITED STATES

JUNE 26, 2008

Mr. DURBIN (for himself, Mr. LAUTENBERG, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend titles V, XVIII, and XIX of the Social Security Act to promote cessation of tobacco use under the Medicare program, the Medicaid program, and the maternal and child health services block grant program.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare, Medicaid,  
5 and MCH Tobacco Cessation Promotion Act of 2008”.

1 **SEC. 2. MEDICARE COVERAGE OF COUNSELING FOR CES-**  
 2 **SATION OF TOBACCO USE.**

3 (a) **COVERAGE.**—Section 1861(s)(2) of the Social Se-  
 4 curity Act (42 U.S.C. 1395x(s)(2)) is amended—

5 (1) in subparagraph (Z), by striking “and” at  
 6 the end;

7 (2) in subparagraph (AA)(iii), by inserting  
 8 “and” at the end; and

9 (3) by adding at the end the following new sub-  
 10 paragraph:

11 “(BB) counseling for cessation of tobacco use  
 12 (as defined in subsection (ddd));”.

13 (b) **SERVICES DESCRIBED.**—Section 1861 of the So-  
 14 cial Security Act (42 U.S.C. 1395x) is amended by adding  
 15 at the end the following new subsection:

16 “(ddd) **COUNSELING FOR CESSATION OF TOBACCO**  
 17 **USE.**—(1)(A) Subject to subparagraph (B), the term  
 18 ‘counseling for cessation of tobacco use’ means diagnostic,  
 19 therapy, and counseling services for cessation of tobacco  
 20 use for individuals who use tobacco products or who are  
 21 being treated for tobacco use which are furnished—

22 “(i) by or under the supervision of a physician;

23 “(ii) by a practitioner described in clause (i),  
 24 (iii), (iv), (v) or (vi) of section 1842(b)(18)(C); or

25 “(iii) by a licensed tobacco cessation counselor  
 26 (as defined in paragraph (2)).

“(B) Such term is limited to—

“(i) services recommended in ‘Treating Tobacco Use and Dependence: A Clinical Practice Guideline’, published by the Public Health Service in May 2008, or any subsequent modification of such Guideline; and

“(ii) such other services that the Secretary recognizes to be effective.

“(2) In this subsection, the term ‘licensed tobacco cessation counselor’ means a tobacco cessation counselor who—

“(A) is licensed as such by the State (or in a State which does not license tobacco cessation counselors as such, is legally authorized to perform the services of a tobacco cessation counselor in the jurisdiction in which the counselor performs such services); and

“(B) meets uniform minimum standards relating to basic knowledge, qualification training, continuing education, and documentation that are established by the Secretary for purposes of this subsection.”.

(c) PAYMENT AND ELIMINATION OF COST-SHARING FOR COUNSELING FOR CESSATION OF TOBACCO USE.—

1           (1) PAYMENT AND ELIMINATION OF COINSUR-  
2           ANCE.—Section 1833(a)(1) of the Social Security  
3           Act (42 U.S.C. 1395l(a)(1)) is amended—

4                   (A) by striking “and” before “(V)”; and

5                   (B) by inserting before the semicolon at  
6           the end the following: “, and (W) with respect  
7           to counseling for cessation of tobacco use (as  
8           defined in section 1861(ddd)), the amount paid  
9           shall be 100 percent of the lesser of the actual  
10          charge for the service or the amount determined  
11          by a fee schedule established by the Secretary  
12          for purposes of this subparagraph”.

13          (2) ELIMINATION OF COINSURANCE IN OUT-  
14          PATIENT HOSPITAL SETTINGS.—

15                (A) EXCLUSION FROM OPD FEE SCHED-  
16                ULE.—Section 1833(t)(1)(B)(iv) of the Social  
17                Security Act (42 U.S.C. 1395l(t)(1)(B)(iv)) is  
18                amended by striking “and diagnostic mammog-  
19                raphy” and inserting “, diagnostic mammog-  
20                raphy, or counseling for cessation of tobacco  
21                use (as defined in section 1861(ddd))”.

22                (B) CONFORMING AMENDMENTS.—Section  
23                1833(a)(2) of the Social Security Act (42  
24                U.S.C. 1395l(a)(2)) is amended—

(i) in subparagraph (F), by striking “and” after the semicolon at the end;

(ii) in subparagraph (G)(ii), by striking the comma at the end and inserting “; and”; and

(iii) by inserting after subparagraph (G)(ii) the following new subparagraph:

“(H) with respect to counseling for cessation of tobacco use (as defined in section 1861(ddd)) furnished by an outpatient department of a hospital, the amount determined under paragraph (1)(W),”.

(3) ELIMINATION OF DEDUCTIBLE.—The first sentence of section 1833(b) of the Social Security Act (42 U.S.C. 1395l(b)) is amended—

(A) by striking “and” before “(8)”; and

(B) by inserting before the period the following: “, and (9) such deductible shall not apply with respect to counseling for cessation of tobacco use (as defined in section 1861(ddd))”.

(d) APPLICATION OF LIMITS ON BILLING.—Section 1842(b)(18)(C) of the Social Security Act (42 U.S.C. 1395u(b)(18)(C)) is amended by adding at the end the following new clause:

1 “(vii) A licensed tobacco cessation counselor (as  
2 defined in section 1861(ddd)(2)).”.

(e) INCLUSION AS PART OF INITIAL PREVENTIVE  
PHYSICAL EXAMINATION.—Section 1861(ww)(2) of the  
Social Security Act (42 U.S.C. 1395x(ww)(2)) is amended  
by adding at the end the following new subparagraph:

7 “(M) Counseling for cessation of tobacco use  
8 (as defined in subsection (ddd)).”.

9 (f) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to services furnished on or after  
11 the date that is 1 year after the date of enactment of this  
12 Act.

13 SEC. 3. MEDICARE COVERAGE OF TOBACCO CESSATION  
14 PHARMACOTHERAPY.

(a) INCLUSION OF TOBACCO CESSATION AGENTS AS  
COVERED DRUGS.—Section 1860D–2(e)(1) of the Social  
Security Act (42 U.S.C. 1395w–102(e)(1)) is amended—

18 (1) in subparagraph (A), by striking “or” after  
19 the semicolon at the end;

20 (2) in subparagraph (B), by striking the comma  
21 at the end and inserting “; or”; and

(3) by inserting after subparagraph (B) the following new subparagraph:

24           “(C) any agent approved by the Food and  
25           Drug Administration for purposes of promoting,

and when used to promote, tobacco cessation that may be dispensed without a prescription (commonly referred to as an ‘over-the-counter’ drug), but only if such an agent is prescribed by a physician (or other person authorized to prescribe under State law),”.

(b) ESTABLISHMENT OF CATEGORIES AND CLASSES CONSISTING OF TOBACCO CESSATION AGENTS.—Section 1860D–4(b)(3)(C) of the Social Security Act (42 U.S.C. 1395w–104(b)(3)(C)) is amended by adding at the end the following new clause:

“(iv) CATEGORIES AND CLASSES OF TOBACCO CESSATION AGENTS.—There shall be a therapeutic category or class of covered part D drugs consisting of agents approved by the Food and Drug Administration for cessation of tobacco use. Such category or class shall include tobacco cessation agents described in subparagraphs (A) and (C) of section 1860D–2(e)(1).”.

(c) CONFORMING AMENDMENT.—Section 1860D–2(e)(2)(A) of the Social Security Act (42 U.S.C. 1395w–102(e)(2)(A)) is amended by striking “, other than subparagraph (E) of such section (relating to smoking cessation agents),”.



1 **SEC. 4. PROMOTING CESSATION OF TOBACCO USE UNDER**  
 2 **THE MEDICAID PROGRAM.**

3 (a) COVERAGE OF TOBACCO CESSATION COUN-  
 4 SELING SERVICES.—

5 (1) IN GENERAL.—Section 1905(a) of the So-  
 6 cial Security Act (42 U.S.C. 1396d(a)) is amend-  
 7 ed—

8 (A) in paragraph (27), by striking “and”  
 9 after the semicolon at the end;

10 (B) in paragraph (28), by striking the  
 11 comma at the end and inserting “; and”; and

12 (C) by inserting after paragraph (28) the  
 13 following new paragraph:

14 “(29) at the option of the State, counseling for  
 15 cessation of tobacco use (as defined in section  
 16 1861(ddd)),”.

17 (2) CONFORMING AMENDMENT.—Section  
 18 1902(a)(10)(C)(iv) of the Social Security Act (42  
 19 U.S.C. 1396a(a)(10)(C)(iv)) is amended by inserting  
 20 “or (29)” after “(24)”.

21 (b) ELIMINATION OF OPTIONAL EXCLUSION FROM  
 22 MEDICAID PRESCRIPTION DRUG COVERAGE FOR TO-  
 23 BACCO CESSATION MEDICATIONS.—Section 1927(d)(2) of  
 24 the Social Security Act (42 U.S.C. 1396r–8(d)(2)) is  
 25 amended—

26 (1) by striking subparagraph (E);



(2) by redesignating subparagraphs (F) through (J) as subparagraphs (E) through (I), respectively; and

(3) in subparagraph (F) (as redesignated by paragraph (2)), by inserting before the period at the end the following: “, other than agents approved by the Food and Drug Administration for purposes of promoting, and when used to promote, tobacco cessation”.

(c) REMOVAL OF COST-SHARING FOR TOBACCO CESSATION COUNSELING SERVICES AND MEDICATIONS.— Subsections (a)(2) and (b)(2) of section 1916 of the Social Security Act (42 U.S.C. 1396o) are each amended—

(1) in subparagraph (D), by striking “or” after the comma at the end;

(2) in subparagraph (E), by striking “; and” and inserting “, or”; and

(3) by adding at the end the following new subparagraph:

“(F)(i) counseling for cessation of tobacco use described in section 1905(a)(29); or

“(ii) covered outpatient drugs (as defined in paragraph (2) of section 1927(k), and including nonprescription drugs described in paragraph (4) of such section) that are pre-

1           scribed for purposes of promoting, and when  
2           used to promote, tobacco cessation; and”.

3       (d) INCREASED FMAP FOR TOBACCO CESSATION  
4 COUNSELING SERVICES AND MEDICATIONS.—The first  
5 sentence of section 1905(b) of the Social Security Act (42  
6 U.S.C. 1396d(b)) is amended—

7           (1) by striking “and” before “(4)”; and

8           (2) by inserting before the period the following:

9       “, and (5) for purposes of this title, the Federal  
10       medical assistance percentage shall be 80 percent  
11       with respect to amounts expended as medical assist-  
12       ance for counseling for cessation of tobacco use de-  
13       scribed in subsection (a)(29) and for covered out-  
14       patient drugs (as defined in paragraph (2) of section  
15       1927(k), and including nonprescription drugs de-  
16       scribed in paragraph (4) of such section) that are  
17       prescribed for purposes of promoting, and when used  
18       to promote, tobacco cessation”.

19       (e) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to services furnished on or after  
21 the date that is 1 year after the date of enactment of this  
22 Act.

1 **SEC. 5. PROMOTING CESSATION OF TOBACCO USE UNDER**  
2 **THE MATERNAL AND CHILD HEALTH SERV-**  
3 **ICES BLOCK GRANT PROGRAM.**

4 (a) QUALITY MATERNAL AND CHILD HEALTH SERV-  
5 ICES INCLUDES TOBACCO CESSATION COUNSELING AND  
6 MEDICATIONS.—Section 501 of the Social Security Act  
7 (42 U.S.C. 701) is amended by adding at the end the fol-  
8 lowing new subsection:

9 “(d) For purposes of this title, quality maternal and  
10 child health services include the following:

11 “(1) Counseling for cessation of tobacco use (as  
12 defined in section 1861(ddd)).

13 “(2) The encouragement of the prescribing and  
14 use of agents approved by the Food and Drug Ad-  
15 ministration for purposes of tobacco cessation.

16 “(3) The inclusion of messages that discourage  
17 tobacco use in health promotion counseling.”.

18 (b) EFFECTIVE DATE.—The amendment made by  
19 subsection (a) shall take effect on the date that is 1 year  
20 after the date of enactment of this Act.

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